

Virginia Board of Medicine Guidance Document 85-6
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(Section III)

F. MEDICAL RECORDS

The Board continues to receive complaints from patients who are unable to procure copies of their medical records from their treatment provider. The Code of Virginia addresses this very clearly in § 32.1-127.1:03 known as the Patient Health Records Privacy Act adopted as law in 1997 and subsequently amended. The Act states that the records kept on an individual patient are the property of the provider. It also states that a patient has a right to a copy of the record, unless release to the patient would be injurious to the patient's health or wellbeing. When a request for records is received, a provider has 15 days to do one of the following:

1. Provide copies of the records.
2. Inform the requester if the information does not exist or cannot be found.
3. Inform the requester of the provider who now maintains the records.
4. Deny the records as possibly injurious to the patient or for lack of proper notification of the patient of a subpoena duces tecum.

Section 54.1-111(c) states that a provider may charge a reasonable fee, not in excess of the amounts authorized by § 8.01-413, for copies of patient records. As of July 1, 2000, the maximum amount authorized by § 8.01-413 is, except for copies of x-ray photographs, \$.50 per page for up to 50 pages and \$.25 a page thereafter for copies from paper and \$1.00 per page for copies for microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed \$10.00.

If the patient files a motion to quash the subpoena, or if you file a motion to quash, send the records only to the clerk of the court which issues the subpoena. The health care provider must wait ten days after receipt of a subpoena before releasing them to the requesting party or the court. The records must be released within 20 days of service of the subpoena. Review this law at www.legis.state.va.us. Click on Legislative Information System; then on Code of Virginia under Searchable Databases; then click on Table of Contents. Scroll down to title 32.1-Health. Click there and then click on Chapter 1-Administration Generally. Scroll down to 32.1-127-1:03.

The Board also receives complaints and questions about the fate of medical records, whether the issue is trying to obtain old records from a previous provider, a practice has been sold, the provider left the practice, etc. There is no law or regulation that addresses how long a provider regulated by the Board must retain records. Conventional wisdom is that records should be retained at least through the statute of limitations on medical malpractice, but this is a matter to be discussed with malpractice carriers. Record disposal should be confidential. The only absolute for retention, from the AMA Code of Medical Ethics, is immunization records. As a rule, every effort should be made to provide a copy of records to patients who leave your practice. This is especially true for immunization records, which adults may need for military induction, application for international work, and trips abroad for leisure and service. If you plan to sell a practice, you should notify all active patients of the impending transfer of records to a new provider as required by § 54.1-2405 of the Code of Virginia to allow them choice in the matter of selecting a new provider. If you plan to leave a practice, notification of patients as far in advance as is practical is preferred, with 30 days as a minimum.